

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

NORMAN LESTER,

Plaintiff,

v.

Case No. 2:11-cv-00431

MICHAEL J. ASTRUE,
Commissioner of Social
Security,

Defendant.

PROPOSED FINDINGS AND RECOMMENDATION

This is an action seeking review of the final decision of the Commissioner of Social Security denying the Plaintiff's application for Supplemental Security Income ("SSI"), under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-1383f. This case was referred to this United States Magistrate Judge by standing order to consider the pleadings and evidence, and to submit proposed findings of fact and recommendation for disposition, all pursuant to 28 U.S.C. § 636(b)(1)(B).

Plaintiff, who is proceeding pro se, filed this action on June 20, 2011. (Docket # 1.) At the time the action was filed, Plaintiff and his girlfriend contacted the court on the last day the complaint could be timely filed and advised the court that they had just learned that the complaint was due to be filed and that his lawyer had advised him he/she would not represent him in federal court. As explained in his Complaint, Plaintiff

represented that he had a meeting with a new lawyer on June 27, 2011. After no notice of appearance was entered by counsel, on July 19, 2011, the court entered an Order and Notice of Status Conference setting a status conference for July 27, 2011, at 11:30 a.m. Plaintiff was advised in the Order and Notice that if he failed to appear, his case would be dismissed without prejudice. (ECF No. 4.) The court directed in the Order and Notice that it be sent to Plaintiff at the address provided in his Complaint, and it has not been returned. Plaintiff failed to appear at the status conference on July 27, 2011. (ECF No. 5.) The court's staff attempted to contact Plaintiff at the numbers provided by Plaintiff at the time of the status conference, but received no response. Since the status conference, Plaintiff has not been in contact with the court.

Based on the above, it is respectfully RECOMMENDED that the presiding District Judge dismiss this matter for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. See also Link v. Wabash Railroad Co., 370 U.S. 626, 630-33 (1962) (finding a court has the authority, pursuant to Rule 41(b), to dismiss a case sua sponte for lack of prosecution without notice of its intention to do so or providing an adversary hearing before acting). It is further respectfully RECOMMENDED that the presiding District Judge dismiss this matter without prejudice.

The parties are notified that this Proposed Findings and

Recommendation is hereby FILED, and a copy will be submitted to the Honorable John T. Copenhaver, Jr. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, the parties shall have fourteen days (filing of objections) and then three days (mailing/service) from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 155 (1985); Wright v. Collins, 766 F.2d 841, 846 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Copies of such objections shall be served on opposing parties and Judge Copenhaver.

The Clerk is directed to file this Proposed Findings and Recommendation and to transmit a copy of the same to counsel of record and mail a copy to Plaintiff.

August 4, 2011
Date

Mary E. Stanley
Mary E. Stanley
United States Magistrate Judge